

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

**EQUAL EMPLOYMENT OPPORTUNITY
COMMISSION,**

Plaintiff,

Vs. Case No. 05-2718 D/P

10 SCI TENNESSEE FUNERAL SERVICES, INC.
d/b/a MEMPHIS FUNERAL HOME and
11 FAMILY FUNERAL CARE,

Defendant.

THE DEPOSITION OF JAMES KRIEGSHAUSER, JR.
July 20, 2006

COPY

ALPHA REPORTING CORPORATION
Saprena Hagan Smith, RPR, CCR, CSR
236 Adams Avenue
Memphis, Tennessee 38103
(901) 523-8974

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1 The deposition of JAMES KRIEGSHAUSER, JR.,
2 taken on behalf of the Plaintiff, pursuant to
3 Notice, on July 20, 2006, beginning at approximately
4 1:30 p.m., in the offices of Carson L. Owen, Esq.,
5 Equal Employment Opportunity Commission, Memphis
6 District Office, 1407 Union Avenue, Suite 621,
7 Memphis, Tennessee .

8 This deposition is taken in accordance with
9 the terms and provisions of the Federal Rules of
10 Civil Procedure.

11 All forms and formalities are waived, and
12 objections as to relevancy, materiality and
13 competency are reserved, to be presented at or
14 before the hearing. Objections as to the form of
15 the question must be made at the time of the taking
16 of the deposition. The signature of the witness is
17 not waived.

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1 APPEARANCES

2 FOR THE PLAINTIFF:

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11 FOR THE DEFENDANT:

12 MAURICE WEXLER, ESQ.
13 STEPHEN GOODWIN, ESQ.
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19 ALSO PRESENT:

20 MR. E.C. DAVES
21 President
22 Memphis Funeral Home
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25 REPORTED BY:

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1 MR. OWEN: EEOC requests that the
2 court reporter submit the deposition transcript to
3 the deponent for changes and signing in accordance
4 with Federal Rules of Civil Procedure 30(e).

5 JAMES KRIEGSHAUSER, JR.,
6 having been first duly sworn, was examined
7 and testified as follows:

8 DIRECT EXAMINATION

9 BY MR. OWEN:

10 Q. What is your full name, sir?

11 A. James Jerome Kriegshauser, Jr.

12 Q. And your address?

13 A. 1909 Oak Shadow Way -- three words --
14 Waxhaw -- W-A-X-H-A-W -- North Carolina.

15 Q. And the zip?

16 A. 28173.

17 Q. Mr. Kriegshauser, during this deposition,
18 it's important that you understand my questions. If
19 at any point you don't understand one of my
20 questions, will you tell me that so that I can have
21 the question read again or I can try to rephrase it
22 to make it more understandable for you?

23 A. Yes, sir.

24 Q. Thank you. Also, if at any time you
25 realize that an answer you've given to a question is

1 you remembered giving a deposition was about a year
2 ago? Have I got that right?

3 A. Approximately. I cannot recall exactly
4 when.

5 Q. That's fine. Was that in a lawsuit?

6 A. I could not tell you if it was at that
7 level at that point.

8 Q. Okay. Can you tell me what kind of
9 dispute you were giving a deposition in, if it was a
10 dispute?

11 A. I could not recall exactly what it was.
12 You know, I'd have to go back, and someone would
13 have to take a look at the exact records.

14 Q. Yes, sir.

15 A. To the best of my recollection, it had
16 something to do with a consumer that was not
17 satisfied with the services.

18 Q. Do you remember how long ago the last
19 deposition before that one was?

20 A. No, sir.

21 Q. Are you employed?

22 A. Yes, sir.

23 Q. Who is your employer?

24 A. SCI North Carolina Funeral Services,
25 Incorporated.

1 Q. And what is your job there?

2 A. I am the market director.

3 Q. How long have you been in that job?

4 A. Approximately three and a half years.

5 Q. In that job do you have any

6 responsibilities over SCI funeral homes in Memphis?

7 A. No, I do not, sir.

8 Q. Okay. The reason I'm looking a little
9 confused is I thought at some point you did have
10 responsibilities over funeral homes in Memphis more
11 recently than that. That's why I'm looking
12 confused.

13 Let's see if we can sort it out. Three
14 and a half years ago by my calculation, since we're
15 in July 2006, would have been around January 20th of
16 2003? Does that sound right?

17 A. January the 20th? Yes. That sounds
18 correct.

19 Q. Do you remember when it was that you
20 started your market director job with SCI North
21 Carolina?

22 A. The approximate date was November. I'd
23 have to look at the exact. I believe it was 2001.

24 Q. Since November 2001.

25 A. I'd have to look to make sure that that

1 was accurate.

2 Q. All right.

3 MR. OWEN: Let's go off the record
4 just a minute.

5 (off the record)

6 Q. (BY MR. OWEN) I understood you to say, and
7 please correct me if I am wrong, that your current
8 employer is SCI North Carolina Funeral Services,
9 Inc.; is that correct?

10 A. That's correct.

11 Q. And you're the market director there.

12 A. That's correct.

13 Q. And as the marketing director for that
14 company, do you have any responsibilities over
15 funeral homes in Memphis?

16 A. My area responsibility is North Carolina,
17 South Carolina, West Virginia, and Tennessee. I
18 have market directors that report to me -- excuse
19 me, market managers that report to me. Those
20 funeral homes report to that market manager.

21 Q. Okay. So the funeral homes indirectly
22 report to you through a market manager.

23 A. There you go.

24 Q. I think we're zeroing in. It just threw
25 me because I thought we were dealing with SCI

1 reported to Mr. Daves and who also supervised below
2 him the pre-need salespeople?

3 A. Yes, there was.

4 Q. Do you remember who that was?

5 A. David --

6 Q. Was it David Dixon?

7 A. David Dixon, yes. Thank you.

8 Q. Sure. At the time you became market
9 director, was there an employee in the Memphis area
10 named Paul McCarver?

11 A. Yes, sir.

12 Q. What was Mr. McCarver's job?

13 A. At that time I believe it was location
14 manager.

15 Q. Now, what was he responsible for as
16 location manager?

17 A. Operations of the funeral home on an
18 at-need basis.

19 Q. What do you mean by on an at-need basis?

20 A. Was not responsible for pre-need sales.

21 Q. And what location was he manager of?

22 A. Memphis Poplar.

23 Q. As the location manager -- let me back up
24 a minute. At Memphis Poplar, were there pre-need
25 salespeople employed at the time you took over as

1 market director?

2 A. Yes, sir.

3 Q. Okay. As location manager, did
4 Mr. McCarver have any supervisory responsibilities
5 with respect to those pre-need sales employees?

6 A. No, sir.

7 MR. OWEN: I'll ask the court
8 reporter to mark this as Exhibit 1 to this
9 deposition.

10 (Document marked as Exhibit 1.)

11 Q. (BY MR. OWEN) I'm handing you what's been
12 marked as Exhibit 1 to this deposition. Take your
13 time and look over that and, if you can, tell me
14 what that is.

15 A. This is an inside sales counselor's
16 compensation program that has been signed off by the
17 counselor and the sales manager.

18 Q. And what was an inside sales counselor
19 responsible for? What kinds of sales?

20 A. They were responsible for selling a
21 prearranged funeral.

22 Q. So was this a pre-need sales position?

23 A. Yes, sir.

24 Q. Was this also sometimes referred to as a
25 family service counselor?

1 A. Yes, sir.

2 Q. On the first page, is it the same job
3 we're talking about?

4 A. It appears to be.

5 Q. All right, sir. Looking at the last page
6 again of both of Exhibits 1 and 2, at the very top
7 it says "Table 13 - Major (PAF only)." What does
8 "PAF only" mean?

9 A. Prearranged funeral only.

10 MR. OWEN: I'll ask the court
11 reporter to mark this document Exhibit 3 to this
12 deposition.

13 (Document marked as Exhibit 3.)

14 Q. (BY MR. OWEN) You've been handed what's
15 been marked as Exhibit 3 to this deposition. Take
16 your time and look over that and then tell me, if
17 you can, what that is.

18 A. It appears to be a blank copy of a family
19 service counselors 2004 draw-plus compensation
20 program.

21 Q. And do you see on the bottom left of the
22 first page in rather small type where it says
23 "Rev 03/01/04a"?

24 A. Yes, sir.

25 Q. What does that mean? Do you know?

22

1 A. Revised 03/01/2004? I don't know what the
2 "a" stands for.

3 Q. All right, sir. Did this compensation
4 plan develop under your supervision or at some
5 higher level in the organization?

6 A. The plans are designed above my level of
7 responsibility.

8 Q. Okay. So at some point did you receive
9 this plan for implementation?

10 A. Yes, sir.

11 Q. All right. When that happened, did you
12 receive any sort of explanatory memorandum with it
13 telling you what you were supposed to do or why the
14 change was occurring?

15 A. Sir, to the best of my knowledge, I'm sure
16 I probably did. I don't recall exactly what
17 specific -- what particular time for this one, but
18 I'm sure I definitely received direction.

19 Q. I'd like to ask if you would look through
20 your records, and if you have such a memorandum
21 showing when you got this and what the explanation
22 of it was, if you would provide that to the
23 company's lawyers so they can decide whether they're
24 willing to provide it to me.

25 I'm just looking for a little more context

1 about how it was explained when it happened.

2 A. Sure.

3 Q. Thank you. I notice in the back pages of
4 Exhibit 3 up at the top of the pages there are
5 references to gold, silver, and bronze. I don't see
6 any other metals mentioned. Do you know what that
7 means, gold, silver, and bronze?

8 A. Just names of the different levels of
9 compensation.

10 Q. And what was your understanding of which
11 of those would apply to a particular funeral home?

12 A. I'd have to look at an exact time. I
13 believe, if my memory serves me correct, this is
14 when we went to a location-based designation which
15 means depending on the revenue responsibility of
16 that location would designate whether or not those
17 counselors were bronze, silver, or gold.

18 Q. What do you mean by "revenue
19 responsibility"?

20 A. Just whatever the revenue of that
21 location -- I mean, different sizes of location,
22 some produce more revenue than others.

23 Q. I may not be summarizing this or
24 rephrasing this accurately, but it sounds like it
25 was going to be based on the past sales at that

1 facility? Is that a fair way to say it or did I
2 misunderstand?

3 A. That would be part of the criteria,
4 absolutely, to determine what the revenue is.

5 Q. And what would it be besides past sales at
6 that location?

7 A. To the best of my knowledge, I can't think
8 of anything else that would really determine
9 whether -- it's just simple revenue calculations.

10 Q. So that would determine whether employees
11 at a particular facility, at a particular funeral
12 home, were placed under a bronze, silver, or gold
13 plan? Do I understand that correctly?

14 A. You understand that correctly. However, I
15 would have to go look at if this was the exact time
16 when we went to a location designation or not.

17 Q. Okay. Okay. This next exhibit may help
18 us with that, so I'll go ahead and bring it in at
19 this point.

20 MR. OWEN: I'll ask the court
21 reporter to mark this Exhibit 4 to this deposition.

22 (Document marked as Exhibit 4.)

23 Q. (BY MR. OWEN) You've been handed what's
24 been marked as Exhibit 4 to this deposition. Take a
25 look at that and compare it with Exhibit 3.

1 The only difference I have picked up
2 so far is the revision date in the bottom left
3 corner on the -- on all the pages. On Exhibit 4 it
4 says 6/28/04, and on Exhibit 3 it says 3/1/04.

5 And if there are other differences
6 in the two exhibits, they have alluded me. So I
7 guess I'm asking you to help me. If there are
8 differences in the two other than the revision date,
9 if you would point those out to me.

10 A. Sir, without taking the time to go through
11 line item by line item, I mean, I'm -- I mean, we
12 could do that if that's what you're looking for.

13 Other than the revision date, I can tell
14 you that one of the obvious definitions in my
15 opinion, I don't know if you noticed, but all of the
16 plans are \$8 an hour, where in this one --

17 Q. In this one you're now saying is
18 Exhibit 3? I'm just trying to get the record --
19 you're saying \$8 an hour. That's what's in
20 Exhibit 4?

21 A. Exhibit 4, \$8 an hour. If you look
22 through --

23 Q. I see now.

24 A. The bronze, silver, and gold are all \$8 an
25 hour as the base wage.

1 Q. And then in Exhibit 3 they're differing
2 dollar amounts?

3 A. That is correct, sir, as I see it.

4 Q. So the hourly wage sort of equalized in
5 the June 28th, '04, revision to \$8 an hour for
6 everybody; is that correct?

7 A. That's correct.

8 Q. Where under the Exhibit 3 revision,
9 3/1/04, it would vary based on whether you were
10 under -- which of the plans you were under.

11 A. That is correct.

12 Q. All right. And am I correct -- I just
13 remembered this. Am I also correct that there's a
14 difference in the two plans as far as minimum sales
15 required at the bronze level? And let's be even
16 more specific, bronze level, PAF only.

17 MR. GOODWIN: You want to refer to
18 page numbers, Carson? Maybe that will help.

19 Q. (BY MR. OWEN) Yeah. I'm looking at
20 Exhibit 3 at the page that in the bottom right is
21 numbered D00026, and I notice at the top that says
22 "Bronze - (PAF only)."

23 Let me look through and see. I
24 think that's the only page that says that, but I may
25 be wrong. I'm just trying to get a little help from

1 you.

2 A. Sure.

3 Q. Because both of these have been rather
4 confusing to me. I'm trying to see where the PAF --
5 "Bronze - (PAF only)" page is on Exhibit 4. I'm
6 open to anybody that spies it before I do.

7 A. D00041? Is that it?

8 Q. I believe you're right.

9 A. What was your question again?

10 Q. I wanted to find out if the minimum
11 monthly sales changed between Exhibit 3 and
12 Exhibit 4 with respect to bronze level-PAF only.

13 And now that I look at these two pages, it
14 doesn't look like it did. Am I right? Is it 20,000
15 under both plans?

16 A. That's how I understand it.

17 Q. I think it's coming a little back into my
18 memory. In Exhibit 4, I'm going to look now for the
19 page that's silver-PAF only. I think I remember
20 that being -- it looks like it's D00042. That's
21 where it was. Do you see that?

22 A. D00 --

23 Q. D00042 in Exhibit 4.

24 A. Okay.

25 Q. That has a minimum monthly sales of, if I

1 am looking at it correctly, 35,000 a month?

2 A. That is correct.

3 Q. So looking in Exhibit 3, Page D00026, the
4 bronze-PAF only, and looking in Exhibit 4 at the
5 Page No. D00042, and I realize that D00026 is
6 bronze-PAF only and D00042 is silver-PAF only.

7 But if a location was changed under the
8 Exhibit 3 plan, changed from bronze-PAF only under
9 the Exhibit 3 plan and changed to silver-PAF only
10 under the Exhibit 4 plan, am I correct that the
11 minimum required monthly sales would have increased
12 from 20,000 to 35,000 a month?

13 A. That is correct. If they were moving from
14 bronze to silver, the gate would go up.

15 Q. And did that happen with respect to the
16 Memphis Funeral Home Poplar location when Exhibit 4
17 was implemented?

18 A. When Exhibit 4 was implemented, and this
19 is -- having both documentations is helping my
20 memory. But if memory serves me correct, this is
21 when we went to location-based.

22 Q. By "this," you're tapping with your
23 fingers Exhibit 4?

24 A. Exhibit 4. Exhibit 4 throughout my entire
25 area of responsibility, we went to location-based.

1 Q. So when Exhibit 4 came in, everything went
2 to location-specific.

3 A. Correct.

4 Q. And that means it was based on the prior
5 sales history at that location and determined
6 whether you were bronze or silver or gold.

7 A. Exactly.

8 Q. Okay.

9 A. That's correct.

10 Q. And when Exhibit -- well, let me back up a
11 minute. You said Exhibit 3 was developed at some
12 level above your level of responsibility and then
13 came to you, you think maybe with a memo; is that
14 correct?

15 A. All of these plans were developed at a
16 level above me.

17 Q. That's what I was getting to about
18 Exhibit 4. Do you think it's possible Exhibit 4
19 came to you with a memo explaining it also?

20 A. Yes, sir.

21 Q. Would you also look for that memo; and if
22 you find it, give a copy to the company's lawyers so
23 they can decide whether they're giving it to me?

24 A. Let me make a correction.

25 Q. Sure.

1 A. It may not be a memo, but it came in some
2 form of communication. And I'll make sure that
3 you --

4 Q. What I'm after is if anything came to you
5 other than what's in Exhibit 3 and 4 that explains,
6 here's what we're doing and why we're doing it,
7 that's what I'm after, something to maybe give a
8 broader explanation of this change. Okay?

9 A. I understand.

10 Q. I appreciate you checking on that for me.

11 MR. OWEN: I'll ask the court
12 reporter to mark this document Exhibit 5 to this
13 deposition.

14 (Document marked as Exhibit 5.)

15 Q. (BY MR. OWEN) I'm handing you what's been
16 marked as Exhibit 5 to this deposition. If you
17 would compare that to Exhibit 3 and tell me, please,
18 if those two are related and if so, how.

19 A. They appear to be similar family service
20 counselor 2004 draw-plus compensation. Exhibit 5 is
21 executed, it appears, by Patricia Levine, signed on
22 March 1st of 2004, and then also signed by David
23 Dixon on March 4th of 2004 and then by E.C. Daves on
24 March the 8th.

25 Q. In comparing Exhibit -- well, comparing

1 COURT REPORTER'S CERTIFICATE

2 STATE OF TENNESSEE:

3 COUNTY OF SHELBY:

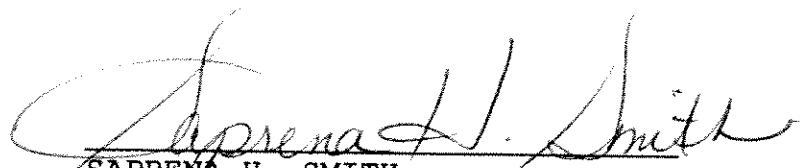
4 I, SAPRENA HAGAN SMITH, Registered
5 Professional Reporter, Certified Court Reporter, and
6 Notary Public for Shelby County, Tennessee,
7 DO HEREBY CERTIFY THE FOLLOWING:

8 1. The foregoing deposition was taken before
9 me at the time and place stated in the foregoing styled
10 cause with the appearances as noted;

11 2. Being a Court Reporter, I then reported the
12 deposition in Stenotype to the best of my skill and
13 ability, and the foregoing pages contain a full, true
14 and correct transcript of my said Stenotype notes then
15 and there taken;

16 3. I am not in the employ of and am not
17 related to any of the parties or their counsel, and I
18 have no interest in the matter involved.

19 WITNESS MY SIGNATURE, this, the 25th day
20 of September, 2006.



21 SAPRENA H. SMITH,
22 RPR, CCR, and Notary Public
23 For the State of Tennessee
24 At Large***
25 TN CCR# 0316

26 My commission expires:
27 August 30, 2010